

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

MARIO PEARSON,

Plaintiff,

v.

Case No. 20-C-1656

KEVIN WHEELER,

Defendant.

DECISION AND ORDER

Plaintiff Mario Pearson is currently serving a state prison sentence at Redgranite Correctional Institution and representing himself. The Court screened his complaint on January 15, 2021, and allowed him to proceed on an excessive force claim. On March 16, 2021, the Court set a discovery deadline of August 16, 2021, and a dispositive motion deadline of September 16, 2021.

Shortly before the discovery deadline, on August 12, 2021, Defendant filed a motion to dismiss for failure to prosecute or, in the alternative, a motion to compel and to stay the scheduling order. Dkt. No. 17. Defendant explains that he served his first set of discovery requests on April 27, 2021. Dkt. No. 18 at 1. Pearson promptly returned a signed copy of a medical authorization form, but he did not respond to Defendant's discovery requests. Defendant served a second set of discovery requests on June 7, 2021. Pearson also failed to respond to Defendant's second set of discovery requests. Defendant made several attempts to contact Pearson, and finally, on July 22, 2021, spoke to Pearson by telephone. According to Defendant, the connection was poor, so Pearson agreed to send a letter the next day to identify his concerns. Defendant did not receive a letter or any further communication from Pearson.

On August 13, 2021, the Court entered a text only order staying the discovery and dispositive motion deadlines. The Court also ordered Pearson to either respond to Defendant's timely served discovery requests or respond to Defendant's motion. The Court warned Pearson if he did neither by September 3, 2021, the Court may impose sanctions, including dismissing this action, based on his failure to participate in discovery and diligently prosecute this action. Dkt. No. 22. The Court instructed Defendant to promptly notify the Court if he received Pearson's discovery responses prior to the deadline. The deadline has passed, and Pearson neither responded to Defendant's discovery requests nor to his motion.

Under Fed R. Civ. P. 37(b)(2), a court may dismiss an action if a party fails to obey an order to provide discovery. Also, under Civil L. R. 41(c), "[w]henver it appears to the Court that the plaintiff is not diligently prosecuting the action . . . , the Court may enter an order of dismissal with or without prejudice." Defendant spent valuable time and resources in an effort to gain Pearson's participation in discovery, and the Court warned Pearson that his failure to participate could result in dismissal of this action. Because Pearson continues to refuse to participate in discovery, the Court finds that he is not diligently prosecuting this action and will therefore dismiss this action.

IT IS THEREFORE ORDERED that Defendant's motion to dismiss for failure to prosecute (Dkt. No. 17) is **GRANTED**.

IT IS FURTHER ORDERED that this action is **DISMISSED**. The Clerk of Court is directed to enter judgment accordingly.

Dated at Green Bay, Wisconsin this 9th day of September, 2021.

s/ William C. Griesbach

William C. Griesbach
United States District Judge